

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No. : 10/716,248 Confirmation No. 5207  
Applicant : David M. Tucker  
& Charles R. Yemington  
Filed : 02/13/2003  
TC/AU : 2856  
Examiner : David Rogers  
  
Docket No. : 205-0034RI1  
Customer No. : 29855

EFS Submission  
Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231

**PETITION UNDER 37 CFR § 1.183 TO ACCEPT A SUPPLEMENTAL REISSUE  
DECLARATION SIGNED BY FEWER THAN ALL OF THE INVENTORS**

Dear Sirs:

Pursuant to 37 CFR § 1.183 and MPEP 1414.01(III), the Patent Owner petitions the USPTO to suspend the requirements of 37 CFR § 1.175, requiring a supplemental reissue declaration signed by joint inventor David M. Tucker.

As set forth in the attached Declaration, Mr. Tucker was formerly employed by the assignee of the instant reissue application and its parent patent. Mr. Tucker has advised his former employer that all contact with him should be made through his attorney, Mr. Wayne Clawater. The undersigned has established contact with Mr. Tucker's attorney (via e-mail), and provided a reissue declaration for Mr. Tucker's signature, together with copies of all relevant materials from the reissue prosecution not previously provided. Mr. Clawater responded, indicating that he would address the matter the next day. After not hearing from Mr. Tucker's attorney for over two weeks, the undersigned sent another e-mail to the same address. No response to this second communication was ever received, nor has any further communication been received from either Mr. Tucker or Mr. Clawater.

The lack of communication from Mr. Tucker or his attorney manifests an unwillingness on the part of Mr. Tucker to sign the supplemental reissue declaration pursuant to 37 CFR § 1.175. Therefore, Patentee submits this petition, together with a supplemental reissue declaration signed by the remaining inventor, Mr. Charles Yemington, in response to the Final Office Action mailed June

Serial No. 10/716,248  
Petition Under 37 CFR § 1.183

21, 2010. Patentee requests that the Office grant this petition and allow the reissue to proceed to issuance.

The Commissioner is authorized to charge the Petition Fee of \$400.00 under 37 CFR 1.17 (f), as well as any other fees that may be due for consideration of this submission, or credit any overpayment to Deposit Account 50-1922.

Respectfully submitted,

By /Billy C. Allen III/

Date: August 4, 2010

Reg. No. 46,147

Wong, Cabello, Lutsch, Rutherford & Brucculeri, L.L.P.

20333 State Hwy 249, Suite 600

Houston, TX 77070

(832) 446-2400

[wcpatent@counselip.com](mailto:wcpatent@counselip.com)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

**SUPPLEMENTAL DECLARATION  
FOR REISSUE  
PATENT APPLICATION  
TO CORRECT "ERRORS" STATEMENT  
(37 CFR 1.175)**

Attorney Docket Number	205-0034USR
First Named Inventor	Tucker, David M.
<b>COMPLETE if known</b>	
Application Number	10/716,248
Filing Date	November 17, 2003
Art Unit	2856
Examiner Name	David A. Rogers

I/We hereby declare that:

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I/We hereby declare that all statements made herein of my/our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

<b>Name of Sole or First Inventor:</b>		<input checked="" type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
David M.		Tucker	
Inventor's Signature		Date	
<b>Name of Second Inventor:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Charles R.		Yemington	
Inventor's Signature		Date	

Additional inventors or legal representatives(s) are being named on the \_\_\_\_\_ supplemental sheets PTO/SB/02A or 02LR attached hereto.

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**SUPPLEMENTAL DECLARATION  
FOR REISSUE  
PATENT APPLICATION  
TO CORRECT "ERRORS" STATEMENT  
(37 CFR 1.175)**

Attorney Docket Number	205-0034USR
First Named Inventor	Tucker, David M.
<i>COMPLETE if known</i>	
Application Number	10/716,248
Filing Date	November 17, 2003
Art Unit	2856
Examiner Name	David A. Rogers

I/We hereby declare that:

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I/We hereby declare that all statements made herein of my/our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

<b>Name of Sole or First Inventor:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
David M.		Tucker	
Inventor's Signature		Date	
<b>Name of Second Inventor:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Charles R.		Yemington	
Inventor's Signature	<i>Charles R. Yemington</i>	Date	28 MAY 2010

Additional inventors or legal representatives(s) are being named on the \_\_\_\_\_ supplemental sheets PTO/SB/02A or 02LR attached hereto.

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No. : 10/716,248 Confirmation No. 5207  
Applicant : David M. Tucker  
& Charles R. Yemington  
Filed : 02/13/2003  
TC/AU : 2856  
Examiner : David Rogers  
  
Docket No. : 205-0034RI1  
Customer No. : 29855

**DECLARATION OF BILLY C. ALLEN III IN SUPPORT OF PETITION UNDER  
37 CFR § 1.183 TO ACCEPT A SUPPLEMENTAL REISSUE DECLARATON  
SIGNED BY FEWER THAN ALL OF THE INVENTORS**

I, Billy C. Allen III, being duly sworn, depose and say:

1. I am over the age of 18, a U.S. Citizen, have personal knowledge of the events set forth below, and am otherwise competent to make this Declaration. My mailing address is 20333 Tomball Parkway, Suite 600; Houston, Texas 77070.
2. I am a licensed attorney in the state of Texas and am authorized to practice before the USPTO in patent matters. In about March, 2010, I assumed responsibility for the prosecution of the instant reissue application.
3. On or about May 24, 2010, I received a telephone call from Examiner Michael Day informing me that the case was in condition for allowance but for a newly executed supplemental reissue declaration, a/k/a "catch-up declaration." I informed Mr. Day that I would attempt to obtain such a declaration from the inventors, but advised him that neither inventor was currently an employee of my client and that I might have some difficulty contacting them.
4. On May 27, 2010, I prepared and sent an e-mail to Mr. Charles Yemington, inventor of the instant application, providing a supplemental reissue declaration and a copy of all pertinent materials from the reissue proceedings. Mr. Yemington returned an executed declaration to me on May 30, 2010, a copy of which is filed herewith.

5. Also on or about May 27, 2010, I reviewed the file for contact information for the other inventor, Mr. David Tucker. In the file, I discovered the e-mail (attached as Exhibit A) from Mr. Pat McCollum (formerly in-house counsel for the assignee of the present invention) to Dr. Marilyn Huston (formerly of my firm and formerly the responsible for the instant matter) indicating that Mr. Tucker had previously refused to meet with any representatives of the assignee of the instant application and had directed that a previous supplemental declaration be forwarded to him through his attorney, Mr. Wayne Clawwater.
6. Because Mr. Tucker is represented by counsel in connection with this matter, Texas Rule of Professional Conduct 4.02 and 37 CFR § 10.87 prohibit me from directly contacting Mr. Tucker. Therefore, on or about May 27, 2010, I sent an e-mail to Mr. Clawwater (attached as Exhibit B) explaining the situation and including a supplemental declaration for Mr. Tucker and including a copy of the most recent claim amendments from the reissue, which had not previously provided to Mr. Tucker.
7. Within two hours of my e-mail, I received a reply e-mail from Mr. Clawwater (attached as Exhibit C) indicating that he was out of town and would address the matter the next day.
8. When I did not receive any further communications from Mr. Clawwater after about one week, I left a message for Mr. Day, indicating that I had not yet been able to secure a declaration from Mr. Tucker. On June 15, 2010, I sent a further e-mail to Mr. Clawwater inquiring whether he had yet addressed the matter with his client. Examiner David Rogers subsequently issued the Final Office Action requiring the supplemental declaration on June 21, 2010. As of the date of this declaration I have not received any further communication from Mr. Clawwater nor have I received any communication from Mr. Tucker.
9. Because I received a reply from Mr. Clawwater to my initial e-mail, I know that he received my communication concerning this matter. Moreover, because I have not received any of: (1) an executed declaration, (2) consent of Mr. Clawwater to contact Mr.

- Tucker directly, (3) questions about the supplemental declaration or reissue proceedings, or (4) an express refusal to provide the reissue declaration, I have concluded that Mr. Tucker is refusing to sign the required reissue declaration.
10. Based on the foregoing, coupled with the facts that Mr. Yemington has executed the required supplemental declaration and that Mr. Tucker has previously executed declarations in connection with this reissue proceeding, I believe that this is an extraordinary situation in which justice requires waiver of the requirement that supplemental reissue declarations be signed by all inventors.
11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements are punishable under 18 U.S.C. § 1001 and may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Respectfully submitted,

By /Billy C. Allen III/ Date: August 4, 2010  
Reg. No. 46,147  
Wong, Cabello, Lutsch, Rutherford & Bruculeri, L.L.P.  
20333 State Hwy 249, Suite 600  
Houston, TX 77070  
(832) 446-2400  
[wcpatent@counselip.com](mailto:wcpatent@counselip.com)

## **EXHIBIT A**



## Marilyn Huston

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**From:** Mccollum, Pat [Pat.Mccollum@weatherford.com]  
**Sent:** Friday, March 02, 2007 1:58 PM  
**To:** Marilyn Huston  
**Subject:** RE: supplemental oath.pdf

Wayne Claywater  
Cruse, Scott, Henderson & Allen, L.L.P.  
2777 Allen Parkway  
7<sup>th</sup> Floor  
Houston, TX 77019-2133

Please send me a copy of any letter you send. I need to give a copy to Weatherford's litigation attorney so he can give a copy to Weatherford's outside counsel.

---

**From:** Mccollum, Pat  
**Sent:** Friday, March 02, 2007 11:41 AM  
**To:** 'Marilyn Huston'  
**Subject:** RE: supplemental oath.pdf

Yemington signed. Yemington wants a copy of the Declaration when fully executed (I have no idea why). Tucker refused to meet with anyone from Weatherford. He said to send the Declaration to his lawyer, Wayne Claywater. It sounds like Tucker's position is that under the SPA he had an obligation to execute papers such as this but since Weatherford breached the SPA, he no longer has any such obligation. I suggest that you call Claywater, 713 650 6600, and explain what we need and send him (sorry I do not have the address) a blank Declaration for Tucker to sign. If Tucker will not sign hopefully we will get a letter from the lawyer so stating so we can use the letter in support of a petition. I will deliver the Declaration signed by Yemington to Cabello when I see him on Tuesday.

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**From:** Marilyn Huston [mailto:MHuston@Counselip.com]  
**Sent:** Thursday, March 01, 2007 3:39 PM  
**To:** Mccollum, Pat  
**Subject:** supplemental oath.pdf

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### CONFIDENTIAL & PRIVILEGED COMMUNICATION

The information contained in this message is privileged, confidential, and protected from disclosure. This message is intended for the individual or entity addressed herein. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others. Also please notify the sender by replying to this message, and then delete it from your system. The sender totally disclaims, and will not accept, any responsibility or liability for the unauthorized use, or the consequences of any unauthorized use, of this communication or message.

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6/12/2007

## **EXHIBIT B**

## Billy Allen

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**From:** Billy Allen  
**Sent:** Thursday, May 27, 2010 10:44 AM  
**To:** 'wclawater@sschlaw.com'  
**Subject:** Mr. David M. Tucker--Supplemental Reissue Declaration for U.S. Patent 6,539,248  
**Attachments:** Supplemental Declaration Form 2010-05-27.pdf; Amendment 2009-02-23.pdf

Mr. Clawater,

I represent Valkyrie Commissioning Services and its parent Weatherford International in various patent matters. Mr. Tucker, one of our former employees and inventors, has in the past directed us to contact him through you.

We are currently prosecuting a reexamination (serial number 10/716,248) of U.S. Patent 6,539,778, of which Mr. Tucker is an inventor. Our current posture before the PTO requires that we provide a supplemental declaration from Mr. Tucker attesting that the errors corrected in the reexamination occurred without deceptive intent.

You may recall discussing this matter with my former partner, Dr. Marilyn Houston, approximately three years ago and that Mr. Tucker provided a supplemental declaration at that time. However, supplemental declarations must be executed after all amendments to the patent, and we have made further amendments since Mr. Tucker's prior declaration.

Therefore, I have attached a new supplemental declaration (a standard PTO form) and a copy of our most recent amendment, which cumulatively shows all changes made to the claims of patent. I would very much appreciate your passing this on to your client for signature and returning it to me at your earliest convenience. A faxed or scanned copy is sufficient. The PTO will likely set a two-month deadline for filing this declaration in the next few days.

Thank you for your assistance, and please do not hesitate to contact me if you have any questions or concerns.

Billy C. Allen III  
Attorney at Law  
Wong, Cabello, Lutsch,  
Rutherford & Brucculeri, LLP  
20333 State Hwy 249, Ste 600  
Houston, Texas 77070  
832-446-2409 (direct)  
832-446-2424 (fax)

## **EXHIBIT C**

## Billy Allen

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**From:** Wayne Clawater [WClawater@sschlaw.com]  
**Sent:** Thursday, May 27, 2010 11:49 AM  
**To:** Billy Allen  
**Subject:** Re: Mr. David M. Tucker--Supplemental Reissue Declaration for U.S. Patent 6,539,248

I am in Dallas today and will address. This tomorrow.

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

**From:** Billy Allen <BAllen@Counselip.com>  
**To:** Wayne Clawater  
**Sent:** Thu May 27 10:43:43 2010  
**Subject:** Mr. David M. Tucker--Supplemental Reissue Declaration for U.S. Patent 6,539,248

Mr. Clawater,

I represent Valkyrie Commissioning Services and its parent Weatherford International in various patent matters. Mr. Tucker, one of our former employees and inventors, has in the past directed us to contact him through you.

We are currently prosecuting a reexamination (serial number 10/716,248) of U.S. Patent 6,539,778, of which Mr. Tucker is an inventor. Our current posture before the PTO requires that we provide a supplemental declaration from Mr. Tucker attesting that the errors corrected in the reexamination occurred without deceptive intent.

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Thank you for your assistance, and please do not hesitate to contact me if you have any questions or concerns.

Billy C. Allen III  
Attorney at Law  
Wong, Cabello, Lutsch,  
Rutherford & Brucculeri, LLP  
20333 State Hwy 249, Ste 600  
Houston, Texas 77070  
832-446-2409 (direct)  
832-446-2424 (fax)

For more information please visit <http://www.messagelabs.com/email>

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For more information please visit <http://www.messagelabs.com/email>

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